

# **EXHIBIT F**

## **PART 2**

1 of equipment.

2 They just sell foot controls. And they  
3 have not found that there is any reason for them to  
4 specify that one is superior and one is inferior  
5 for the application of a power press or the  
6 application of a press brake.

7 BY MR. HARTMAN:

8 Q. My question, sir, is, am I correct that  
9 Linemaster does not make recommendations as to what  
10 foot controls its customers should buy to utilize  
11 on their product?

12 MR. ROBINSON: Objection, that was asked and  
13 answered twice. This is now the third time. You  
14 apparently don't like the answer which has been  
15 given.

16 THE WITNESS: They don't and I believe the  
17 reason is because there is no superior or inferior  
18 application.

19 BY MR. HARTMAN:

20 Q. Have you ever spoke to Linemaster for them  
21 to have told you the reason why they don't  
22 recommend foot controls?

23 A. They do recommend foot controls. They  
24 just don't recommend a particular configuration.

1 I have not called them up and asked them  
2 specifically but it is obvious that they have no  
3 prohibition in their books. And if they, as a  
4 manufacturer of this component, felt it was  
5 critical or essential or important, I would have  
6 expected that they would have made that part of  
7 their brochures, part of their sales catalog, part  
8 of their literature.

9 And I have looked at Linemaster catalogs,  
10 and I have never seen any limitation about applying  
11 this foot control that was either sold at the  
12 time -- sold by Heim or installed at the time of  
13 the accident or one with a front door on it. They  
14 have no prohibitions, limitations, suggestions or  
15 recommendations. So in my mind they are all  
16 probably equally good. They have some upsides and  
17 some downsides.

18 Q. All what are equally good?

19 A. All of those two categories of foot  
20 controls, those that do have a front door on it and  
21 those that do not.

22 Q. When you evaluate a press brake such as in  
23 this case, do you in formulating your opinion as to  
24 the foot brake -- strike that.

1                   In evaluating the press brake in this case  
2                   and the use of the foot control that we allege  
3                   caused the accident to Ms. Lindquist, do you rely  
4                   upon the ANSI standard to make a determination as  
5                   to whether or not the foot control made the press  
6                   brake defective?

7                   MR. ROBINSON: Objection to the form, also  
8                   asked and answered.

9                   THE WITNESS: What I would do is rely on the  
10                   OSHA criteria first. The OSHA criteria says that  
11                   all points of operation should be safeguarded.  
12                   They also embrace the ANSI standard. The ANSI  
13                   standards say that these kinds of locations for a  
14                   part as the plaintiff was working on should have  
15                   safeguarding.

16                   The safeguarding is not the control, the  
17                   actuating device. It is not the foot control in  
18                   this case. The foot control is not the  
19                   safeguarding device. It is supposed to have a  
20                   point-of-operation safeguarding device which  
21                   traditionally in press brakes have been probably  
22                   light curtains and things like those. But it could  
23                   also be physical barrier guards especially in a  
24                   part like she was making, a small part.

1           And you also, I would look at the concept of  
2        both the manufacturer of this equipment and the  
3        concept that was part of OSHA for a while and is a  
4        regulation and a part of OSHA and ANSI now as a  
5        recommended guideline that people not, if possible,  
6        not put their hand into the point of operation.

7           There are lots of tools, mechanical tools that  
8        could have been used for the -- apparently for the  
9        operation she was undertaking which would have  
10       again avoided this hazard, her exposure to this  
11       hazard. So that's what I would have looked to  
12       first. But I wouldn't have looked to the ANSI  
13       standards all by themselves in a void.

14       BY MR. HARTMAN:

15       Q.    Well, assume for me, will you please, that  
16       the foot control did not meet the ANSI standard  
17       that was supplied with the press brake.

18       A.    In what way?

19       Q.    That it was an uncovered foot control.

20       A.    But it was covered.

21       Q.    I am asking you to assume for me as true  
22       that it was an uncovered foot control.

23       A.    You mean there was no top cover--

24       Q.    No top cover, no side.

1 A. Okay.

2 Q. And it was supplied with the press brake  
3 that Ms. Lindquist's injuries occurred on?

4 A. Uh-huh.

5 Q. Would you agree, sir, that supplying that  
6 foot control with that machine would make the  
7 machine defective?

8 MR. ROBINSON: Object to the form of the  
9 question.

10 THE WITNESS: I think if that device was  
11 provided and there was proper point-of-operation  
12 safeguarding or there was some administrative  
13 controls that could be enforced and utilized to  
14 prevent hands being in dyes, that it probably would  
15 be acceptable not to have the shielding at the top  
16 and side shielding.

17 But ANSI appears to have endorsed top and side  
18 shielding for foot controls and probably a strict  
19 interpretation of just what's written in the ANSI  
20 standard would imply that it would have to have a  
21 top and side shielding, not front shielding in any  
22 way.

23 But I can envision configurations where even  
24 though it wouldn't comply with that component of

1 ANSI, the machine would probably still be  
2 reasonably safe because of the point-of-operation  
3 safeguarding.

4 BY MR. HARTMAN:

5 Q. Would it be reasonably safe for a  
6 manufacturer to include a unguarded foot control  
7 with a press brake without knowing the type of  
8 safety mechanisms that are going to be attached to  
9 the machine once it leaves its possession?

10 MR. ROBINSON: Objection to the form.

11 THE WITNESS: My recommendation back in the  
12 '70s and even today would be that you should, if  
13 you are going to provide a foot control for a  
14 machine of this type, that it have side guarding  
15 and top guarding.

16 BY MR. HARTMAN:

17 Q. Would you agree, sir, that if it did not  
18 have top or side guarding it would make a press  
19 brake dangerous in certain circumstances?

20 MR. ROBINSON: Objection to the form, also  
21 asked and answered.

22 THE WITNESS: It could in certain  
23 circumstances.

24

1 BY MR. HARTMAN:

2 Q. And it would be unreasonably dangerous in  
3 certain circumstances; am I correct?

4 A. In certain circumstances, that's correct.

5 Q. And that would be certain circumstances  
6 that are foreseeable to the manufacturer; am  
7 I correct?

8 MR. ROBINSON: Objection to the form. It is  
9 speculative as well.

10 THE WITNESS: In certain circumstances it might  
11 be foreseeable to the manufacturer, yes.

12 BY MR. HARTMAN:

13 Q. You indicate that ANSI embraces, allows,  
14 encourages and endorses shielded foot controls; am  
15 I correct?

16 A. Uh-huh.

17 Q. Would you also agree that any foot control  
18 that has a shield on it regardless of whether it  
19 has a gate or not would be embraced, allowed,  
20 encouraged or endorsed by ANSI?

21 MR. ROBINSON: Object to the form.

22 THE WITNESS: Could you say that question back?  
23 Any foot control?

24

1 BY MR. HARTMAN:

2 Q. Yes, that has a shield on it regardless of  
3 whether it has a gate on it or an anti-trip latch  
4 in the back?

5 A. Well, no, it should have control  
6 reliability. It should be within a force and  
7 functional range of human use. I think they would  
8 endorse the kind of foot control that was sold with  
9 this machine by Heim and the kind that would have  
10 been there at the time of this accident.

11 But I can envision a foot control that has  
12 a top shield and a side shield that's made out of  
13 cardboard that wouldn't be acceptable or one that's  
14 made out of the best metals so it could never be  
15 compromised but it has no control reliability or  
16 one that the force is so high or the movement is so  
17 strange, it would cause some kind of problem for  
18 the operator.

19 Q. That's a fair distinction. I apologize.  
20 I did not make -- my thought process did not  
21 include those types of scenarios.

22 Would you agree that a Linemaster 511 with  
23 a gate would be an -- a foot control that would be  
24 embraced, allowed, encouraged or endorsed by ANSI

1 for use on press brakes?

2 MR. ROBINSON: Objection to the form.

3 THE WITNESS: I don't think it would be  
4 disallowed but it is not the one that's promoted by  
5 them. It is not the one that they in their  
6 literature that they depict. It is not the one  
7 that's generally sold. It is not the one that OSHA  
8 has in their on their website and their publication  
9 showing this is an appropriate foot switch.

10 They would not eliminate one with a door on the  
11 front nor would they eliminate one that would  
12 necessarily have red, white and blue stripes on it.

13 It is ultimately the responsibility of the  
14 employer for the safety; and if the employer  
15 chooses one where there is a foot switch inside a  
16 foot switch inside a box, that's their  
17 responsibility. But if an OSHA inspector comes out  
18 and inspects them and finds out that that renders  
19 the machine unreasonably dangerous, they will  
20 probably get a citation.

21 So they -- what I said before is is the foot  
22 switch as sold by Heim and/or the foot switch there  
23 at the time of the accident is visually the one  
24 that's shown in the OSHA and ANSI standards and in

1 other National Safety Council publications as being  
2 acceptable and promoted. But certainly you could  
3 put other kinds of devices on if you want.

4 BY MR. HARTMAN:

5 Q. Would you agree that a gated -- a  
6 Linemaster 511 that was gated if provided by Heim  
7 with this machine would have been embraced,  
8 allowed, encouraged or endorsed by ANSI?

9 MR. ROBINSON: Objection, you just asked that  
10 and he just gave you a lengthy answer on it and now  
11 you apparently want him to give a different answer.

12 THE WITNESS: You said if it would be. You  
13 mean would they allow it?

14 BY MR. HARTMAN:

15 Q. Yes.

16 A. I don't think they would disqualify it but  
17 it is not the one that they promote as far as being  
18 the one that's described and shown in their  
19 literature.

20 Q. Well, are you -- is it your testimony  
21 today that ANSI promotes only the type of foot  
22 cover that's shown in the illustration with the  
23 standard?

24 A. No, I am not saying that. What I am

1 saying is if you have got a product line and you  
2 say, here is a good example, that's the one you are  
3 promoting. Certainly you have all of these other  
4 kinds of configurations but this is the one that's  
5 considered to be a prime, good example.

6 There may be reasons not to use a foot  
7 pedal with a gate on it, on the front, and one of  
8 those reasons is people riding the pedal. So that  
9 may be one of the reasons that they don't use it as  
10 their prime example in many of their publications.

11 But you can and they do manufacture them  
12 with lip latches. They manufacture them with doors  
13 on the front. They manufacture them with a lot of  
14 other features, coloration, size, extra width,  
15 those kinds of things, additional resistance to  
16 moisture, odd environments, shielding from EMI, all  
17 of those kinds of things.

18 But the one that was sold by Heim, the one  
19 that was there at the time of the accident is the  
20 one that is demonstrated in their literature as  
21 being acceptable.

22 Q. Would a Linemaster 511 with a gated --  
23 that was gated comply with the ANSI standard as it  
24 relates to press brakes?

1 MR. ROBINSON: Objection, asked and answered  
2 again.

3 THE WITNESS: Yes, it would.

4 BY MR. HARTMAN:

5 Q. Would a Linemaster 511 that was ungated  
6 comply with the ANSI standard?

7 A. Yes, it would.

8 Q. Is there a difference in the likelihood of  
9 an operator riding the pedal -- is there a  
10 difference between a press brake and a power press  
11 as to the likelihood an operator would ride the  
12 pedal of the foot control?

13 A. You mean a mechanical power press,  
14 correct?

15 MR. ROBINSON: Object to the form.

16 BY MR. HARTMAN:

17 Q. Yes.

18 A. And I think --

19 Q. Let me tell you what I am trying to get to  
20 so that -- what I am wondering is if you are  
21 operating a mechanical power press, is the operator  
22 more likely to ride the pedal of the foot control  
23 when operating a mechanical power press or is an  
24 operator more likely to ride the foot control when

1 operating a press brake?

2 MR. ROBINSON: Objection to the form. It also  
3 makes assumptions.

4 THE WITNESS: There is nothing in the  
5 literature, whether it is the codes or standards or  
6 the general literature or investigations or Ralph  
7 Barnett's publication -- and he published a fair  
8 amount about foot controls -- that says that press  
9 brakes are -- people are more or less likely to  
10 ride the pedal compared to mechanical power  
11 presses.

12 I think the key factor in people riding a pedal  
13 is that it is in a manual mode and that if there is  
14 a very long lag time between operations, in other  
15 words, someone makes a -- does some process with a  
16 device and, for example, walks away and comes back,  
17 they certainly cannot ride the pedal because they  
18 are physically gone.

19 But if we look specifically for this case, this  
20 mechanical -- this press brake has a cycle speed of  
21 30 cycles per minute. So effectively if you -- if  
22 you were making the right kind of part, every two  
23 seconds you could be hitting the foot control if it  
24 is in manual operation. And certainly you might

1 want to ride the pedal when you are doing that.

2 A mechanical power press, there are a lot of  
3 production runs where there is long lag times  
4 between pieces and you might not want to run --  
5 keep your foot in there and ride the pedal. So  
6 there isn't a mandate one way or the other.

7 And if anyone tries to tell that you there is,  
8 they are absolutely wrong; and there is no basis  
9 for saying that.

10 And I brought literature with me here today  
11 that shows the press -- the rate, the cycling rate  
12 or the times per cycle for press brakes and  
13 particularly this press brake compared to  
14 mechanical power presses way overlap. It depends  
15 on the operation --

16 BY MR. HARTMAN:

17 Q. What literature was that?

18 MR. ROBINSON: Were you finished, Dr. Hutter?

19 THE WITNESS: No, I wasn't.

20 It way overlaps and it more depends on the part  
21 that's being made and the dynamics of the  
22 equipment. And again for this press, this press  
23 brake, it is intended to be run at a fairly high  
24 cycle rate or strokes per minute.

1        The two things I brought were from the  
2        fabricator, from their website, Press Brake Buyer's  
3        Guide, which lists, oh, a dozen or more  
4        manufacturers and then within each manufacturer  
5        many different kinds of models. And it tells you  
6        effectively the speeds of operation.

7 And then from --

8 MR. HARTMAN: Can we mark that as Exhibit  
9 No. 2, please?

10 THE WITNESS: You know, Exhibit No. 1, I guess  
11 was never really, a stamp was never really put on  
12 it. Should we do that now?

13 MR. HARTMAN: Yeah, we should do that.

14 THE WITNESS: Or I may be wrong but maybe it  
15 was but --

16 (Whereupon, HUTTER Deposition  
17 Exhibit No. 1 and 2 were marked  
18 for identification.)

19 THE WITNESS: Some of these are my originals,  
20 so if you want copies attached to my deposition,  
21 I guess at the end of this deposition, make copies  
22 and give me the original or the copies.

23 MR. ROBINSON: That's how we have been doing  
24 it. You keep your -- I would like you to keep your

1 originals, and we will keep copies.

2 BY MR. HARTMAN:

3 Q. Have we marked Exhibit No. 3?

4 A. No.

5 No. 3 is a listing from the journal called  
6 Stamping. And it is mechanical presses and again  
7 lists several, over a dozen manufacturers and  
8 within each manufacturer several different models  
9 and again gives the speeds. And if you look at  
10 them, the cycle time or the cycles per second or  
11 the interval between part production will overlap  
12 those for press brakes. So there is no standard  
13 where you can say this machine always works slow  
14 and this machine always goes fast.

15 (Whereupon, HUTTER Deposition  
16 Exhibit No. 3 was marked for  
17 identification.)

18 THE WITNESS: And as long as we are --

19 MR. HARTMAN: Hold on one second just while she  
20 is putting the mark on.

21 THE WITNESS: And as long as we are on the  
22 subject, there was -- because I heard that  
23 Professor Barnett had taken this position, I went  
24 on the Internet and found a document or an article

1 that says How Fast is Fast and they talk about  
2 different speeds for presses, for example. And  
3 they talk about presses that have 50 strokes a  
4 minute, 120 stroke per minute, 15 strokes a minute  
5 and some that go as high as 500 to 1200 strokes a  
6 minute.

7 So there isn't a standard rate that you can say  
8 that all mechanical presses operate at and there  
9 isn't some standard rate press brakes work at. But  
10 if you look at this particular press brake --

11 BY MR. HARTMAN:

12 Q. Is that marked as an exhibit?

13 A. Not yet.

14 MR. HARTMAN: Let's have that marked as a  
15 number. Do we have 3? Let's have that marked as  
16 No. 4, please.

17 THE WITNESS: If you looked at this particular  
18 press brake, again, the cycle time is about two  
19 seconds. I could see if someone wanted to make a  
20 part every two seconds, they would probably leave  
21 their foot in the -- on the pedal to do that.

22 (Whereupon, HUTTER Deposition  
23 Exhibit No. 4 was marked for  
24 identification.)

1 BY MR. HARTMAN:

2 Q. Have you relied upon Exhibits 2, 3 and 4  
3 to formulate your opinions in this case?

4 A. I don't know that I have relied on them.  
5 I knew these numbers or these ranges before but  
6 I figured you would say, well, where are you coming  
7 up with that. And I just picked three articles to  
8 demonstrate that. You can go on the web and get  
9 from particular manufacturers -- and I have looked  
10 at these, I just didn't print them all out -- the  
11 cycle times for their press brakes, the cycle times  
12 for their mechanical power presses and the cycle  
13 times in strokes per second widely overlap.

14 So I don't know if you would call it  
15 relying on it. I just used these as examples.

16 Q. Is it your contention that the information  
17 contained in Exhibits 2, 3 and 4 is accurate?

18 A. I believe it is accurate to demonstrate  
19 the phenomenon I am talking about, yeah, or  
20 sufficiently accurate.

21 Q. Would I be correct that the information  
22 contained in 2, 3 and 4 is information that  
23 illustrates your opinion that there is an overlap  
24 between press brake and mechanical power press

1 speeds?

2 A. Yes, it is not an exhaustive demonstration  
3 of that but since this is just a new theory that  
4 surfaced in the last few days here, I thought  
5 I would go online and find examples to contradict  
6 that.

7 Q. When did you go online?

8 A. For these articles?

9 Q. Yes.

10 A. I was looking to see if they have a date  
11 on them. This one looks like it has a date of  
12 4/10. Today is the 12th. So that would have been  
13 Monday.

14 Another one, this article has a date of --  
15 at least the abstract has a date of 4/11. I think  
16 the article was actually bought probably over the  
17 weekend. So it has been -- I believe they were at  
18 the time or since the time of Ralph Barnett's  
19 deposition.

20 Q. Who did you speak with in order to  
21 determine the substance of Professor Barnett's  
22 deposition?

23 A. Mostly to the attorney but when  
24 Mr. Switalski got back to the office, I did ask

1 him, because he had met with Mr. Robinson I believe  
2 the night before his deposition -- I am not certain  
3 exactly if that's correct but I think he did -- and  
4 I think he relayed to me that Ralph Barnett had  
5 taken these new and unusual positions that weren't  
6 detailed in his report and had acknowledged that  
7 there were some errors in his report, acknowledged  
8 that even though he has taken these positions, he  
9 has never published anything about it, never made  
10 mention of it before.

11 Q. So who did you talk to in order to  
12 determine what Professor Barnett had said prior to  
13 7:00 o'clock this morning?

14 A. The only two people I talked to with any  
15 meaningful content about Professor Barnett's  
16 deposition was a brief conversation with Bill  
17 Switalski and a brief conversation with the  
18 Attorney Robinson.

19 Q. And Mr. Robinson would be this morning?

20 A. Yes.

21 Q. And Mr. Switalski would have been last  
22 week?

23 A. I think it was the day of his deposition.

24 Q. Are you familiar with the Triodyne safety

1 briefs that Mr. Switalski testified to?

2 A. I am not -- I haven't read his deposition,  
3 so I am not certain which ones he testified to  
4 specifically. I referred to several of them in my  
5 report. And I think I probably looked at all of  
6 the ones that Mr. Switalski looked at. But  
7 I didn't do a one-for-one comparison.

8 Q. Have you co-authored any of the articles  
9 with Professor Barnett?

10 A. In the safety brief?

11 Q. Yes.

12 A. I have authored articles that have been  
13 set out under the banner of the safety brief for  
14 related publications but the only one I think where  
15 I was a co-author with Ralph Barnett was one having  
16 to do with meat grinder safety, meat grinder throat  
17 safety.

18 But I wasn't a co-author to any of the  
19 ones having to do with his -- there is two or three  
20 that talk about foot pedals, foot controls and  
21 there are three or four that talk about different  
22 safety philosophies that I believe those  
23 philosophies are now being violated by his position  
24 in this case.

1 Q. Do you agree with Professor Barnett's  
2 safety philosophies as outlined in his articles?

3 MR. ROBINSON: I object to the form and the  
4 breadth of that question.

5 THE WITNESS: That's like saying do you believe  
6 in all of the state laws. I haven't read each and  
7 every word of everything he has written especially  
8 in the last few years since I have been out of  
9 there. But I am familiar with his publishing on  
10 things like the safety hierarchy, compatibility  
11 kinds of things.

12 He has a flow chart that would help you  
13 identify based on a classification of safeguarding  
14 devices whether or not they should or should not be  
15 used; and if you follow that procedure, that  
16 protocol that he promoted, you would not use the  
17 foot control that he is now promoting, this foot  
18 control with a guard on the front.

19 So in response to your question, I have read  
20 many of the things. I don't know that I believe in  
21 all of them. Some of them I think rang true, some  
22 of them I think are perhaps pretentious and are  
23 more philosophical than factual.

24

1 BY MR. HARTMAN:

2 Q. Well, let's talk about with regard to the  
3 safety feature flow chart.

4 A. Uh-huh.

5 Q. Do you agree that that flow chart is a  
6 good chart to utilize in analyzing whether or not a  
7 safety feature should be included or excluded on a  
8 product?

9 MR. ROBINSON: Objection to the form.

10 THE WITNESS: You know, good, sharp, good  
11 philosophy. It is a philosophy. I don't know that  
12 it is a superlative philosophy but it is a  
13 philosophy that Ralph Barnett has embraced,  
14 promoted and continues to promote except in this  
15 case.

16 I think it has some weaknesses and some  
17 strengths in it, and I can understand the basis of  
18 it. But I think if the result of that philosophy  
19 applied here, it would be contrary to the positions  
20 he is taking here.

21 BY MR. HARTMAN:

22 Q. Is it a means that you would utilize in  
23 making a determination as to whether or not a  
24 safety feature should be included with a particular

1 product?

2 MR. ROBINSON: Objection to the form. Excuse  
3 me.

4 THE WITNESS: It might be included in the means  
5 but I don't think it would be a stand-alone means.

6 BY MR. HARTMAN:

7 Q. So is it your testimony -- is your  
8 testimony geared more towards Professor Barnett did  
9 not follow his own flow chart or you disagree with  
10 the flow chart?

11 MR. ROBINSON: I will object to the form of the  
12 question.

13 THE WITNESS: That he is at total odds to his  
14 own safety philosophy as defined by that article  
15 and as visually displayed in that flow chart. It  
16 is -- if you would follow his flow chart and the  
17 rationale behind it and protocol behind it, you  
18 would come to the conclusion that this foot control  
19 with a front gate on it should not be applied to  
20 this press, this press brake by the manufacturer of  
21 the press brake.

22 BY MR. HARTMAN:

23 Q. Do you -- my problem is I am not sure that  
24 you are not relying upon the flow chart to say that

1 the foot control should not be included with the  
2 press brake. Are you relying upon the flow chart  
3 as part of the decision-making process to conclude  
4 that a gated foot control should not be included on  
5 this press brake?

6 MR. ROBINSON: Objection to the form.

7 THE WITNESS: You asked me before would I rely  
8 on it, and I said to some degree I would. There  
9 are probably other things that should be taken into  
10 account that are not addressed here.

11 BY MR. HARTMAN:

12 Q. Would you tell me what those are?

13 A. It is not an exhaustive chart. It is not  
14 an exhaustive protocol. But it is a protocol that  
15 he feels he created that he has published and that  
16 he promotes. And if you were to follow that  
17 protocol, you would come to the conclusion that the  
18 foot control as sold by Heim or as there at the  
19 time of the accident would be proper and in fact a  
20 foot control with a door on the front would be  
21 inappropriate for Heim to have provided.

22 Now, was there another question?

23 Q. Yeah, my question is you said it would be  
24 something that you would be -- the flow chart is

1 something that you would use in conjunction with  
2 other things in order to make a determination as to  
3 whether or not a gated foot control should be  
4 placed on the Heim press brake. Would you please  
5 tell me what those other things are?

6 A. Well, I haven't made an exhaustive list of  
7 what all those other things would be but a couple  
8 of things pop into my mind.

9 First of all, I believe that flow chart  
10 makes the assumption that employers are doing  
11 reasonable things as far as training their people,  
12 as far as supervising their people, as far as  
13 complying with codes and standards.

14 I think it assumes that there isn't some  
15 bizarre, unusual work pattern or practices going  
16 on. I think it assumes that the work force is  
17 reasonable in communicating with their supervisors  
18 and people in charge, there is not a language  
19 problem, a language barrier.

20 Those kinds of things are not really  
21 addressed in it. I think there are maybe perhaps  
22 some assumptions. And there are probably other  
23 things but I just haven't -- before I came to this  
24 deposition, I didn't try to think of all of the

1 faults or failings or short ends in that chart.  
2 But if you follow that chart, again, you would come  
3 to the conclusion that a foot pedal with a door on  
4 it should not be provided by Heim.

5 Q. So your utilization of the chart in your  
6 report is directed to the fact that from your  
7 opinion Professor Barnett did not follow the chart  
8 to reach his conclusions?

9 MR. ROBINSON: I will object to the form of the  
10 question.

11 THE WITNESS: That's correct. He promotes this  
12 chart. This is his philosophy. That is what he  
13 embraces. And for some reason on this particular  
14 case he has ignored it, hasn't talked about it in  
15 his report. And if you were to go through that  
16 protocol, you would very obviously come to the  
17 conclusion that you should not put a foot control  
18 with a door on it on this machine as provided by  
19 Heim.

20 BY MR. HARTMAN:

21 Q. My question, sir, is really, yes or no.  
22 And my question is, so your testimony and your  
23 report where you incorporate the flow chart is  
24 geared towards saying Professor Barnett did not

1 apply the flow chart to his analysis correctly; is  
2 that a correct statement?

3 MR. ROBINSON: Objection to the form, asked and  
4 answered. And this witness never has to give a  
5 yes-or-no answer if that would be ambiguous and  
6 unclear to someone that read this transcript later  
7 on and has every right to explain any yes-or-no  
8 answer and for you to suggest otherwise is wrong.

9 BY MR. HARTMAN:

10 Q. Go ahead, sir.

11 A. I will try to answer the best I can. He  
12 never applies that. He never in his report  
13 mentions that protocol. He never uses it in his  
14 analysis. It is never brought out. He never  
15 explains why there might be a reasonable  
16 inconsistency.

17 He ignores it because in my reading of it  
18 and his testimony are that they are incompatible  
19 one with another, and I said that in my report.  
20 That philosophy that he has written and promoted is  
21 incompatible with his position that there should be  
22 a front gate on this device.

23 Q. Did you use that flow chart in order to  
24 arrive at your opinion that the gated foot control

1 was not necessary for this press brake?

2 MR. ROBINSON: Objection to the form, asked and  
3 answered.

4 THE WITNESS: No, I came to that conclusion  
5 based on all of these other things but if you do  
6 use that, you will also come to that conclusion.  
7 But I didn't use it for that purpose.

8 BY MR. HARTMAN:

9 Q. Am I correct that Mr. Switalski was  
10 brought in because he is more familiar with the  
11 articles written by Professor Barnett than you are?

12 MR. ROBINSON: Objection to the form of that  
13 question.

14 THE WITNESS: That's probably a question you  
15 should really ask the person who retained him.  
16 I believe somewhere in the development of my  
17 involvement in this case I was asked, do you know  
18 other people who are familiar with Ralph Barnett's  
19 publications, his safety philosophy, the positions  
20 he has taken in prior cases.

21 And I said, you know, I know two guys who used  
22 to work for him, who worked very closely for him  
23 who were his project engineers on some occasions  
24 and maybe they could help you. And I think

1 I mentioned two individuals and Bill Switalski was  
2 one of those people.

3 BY MR. HARTMAN:

4 Q. Have you ever testified that any of  
5 Professor Barnett's articles were authoritative?

6 A. I try not to say that any stand-alone  
7 document is authoritative. Sometimes you can't do  
8 that. I think most of the things that Ralph  
9 Barnett has published are taking bits and pieces of  
10 what a lot of other people have done and put them  
11 together in a nice package.

12 So I may have used them as examples that  
13 simply explain, for example, the safety hierarchy.  
14 But the safety hierarchy isn't something that he  
15 actually developed. If you look at the literature,  
16 that philosophy has been around for a long, long  
17 time. What he did was he took that philosophy  
18 that's been around for a long, long, time and put  
19 it in a nice, concise article and gave some  
20 examples and put numbers on it and published it.

21 But that philosophy isn't some special  
22 philosophy that he came up with. It comes from the  
23 safety literature. So I may have used it as an  
24 example because it is so nice and concise in some

1 ways. But if that document didn't exist, that  
2 philosophy would still be out there in other  
3 documents.

4 Q. Have you ever used Professor Barnett's  
5 articles as authoritative in any of your testimony?

6 A. Like I said, I try not to use any one  
7 article as authoritative. So I doubt if I used any  
8 of his articles as deemed the authoritative one, at  
9 least none that I can think of.

10 But I may have used them -- I actually  
11 have used them in classrooms as examples that bring  
12 together a safety philosophy that I think is a  
13 nice, concise document. Instead of having to copy  
14 a hundred pages for students, I only have to copy  
15 ten maybe or three or four pages. So in the safety  
16 classes I teach, I actually have used some of  
17 these; and I have shown the strengths, the  
18 weaknesses, the pitfalls in the development of  
19 these different safety philosophies.

20 Q. You used the term, you have not used any  
21 of Professor Barnett's article as "the"  
22 authoritative. I am not asking you if you have  
23 testified in the past that Professor Barnett's  
24 articles are "the" authoritative.

1                   I am asking you, sir, have you ever  
2 testified that Professor Barnett's articles are  
3 "an" authoritative source as opposed to "the"  
4 authoritative source?

5                   A. And I said before, I try not to ever rely  
6 on any one document as being "the" authoritative.  
7 Sometimes you have no choice. Fortunately for  
8 almost all of the things that Professor Barnett has  
9 published in his safety briefs, there are a lot of  
10 documents that there is a -- there is a body of  
11 literature that supports a particular philosophy.  
12 And in many cases he has taken bits and pieces of  
13 that body of information and put it into a  
14 document.

15                   So I would call the body of information  
16 authoritative but rarely would any one document  
17 within there be the authoritative document.

18                   Now, sometimes there is an authoritative  
19 document. For example, in this case I think there  
20 is an authoritative drawing that shows that there  
21 was a point in time when one foot control was used  
22 and another point in time a different foot control  
23 was used. I would say that's a fairly  
24 authoritative document showing that.

1                   So in that case there aren't -- there  
2                   isn't a body of literature about that because it is  
3                   something no one would have written about. But  
4                   I think that document is fairly authoritative as  
5                   far as an inflection point with regards to the  
6                   model of foot control that was used.

7                   Heim sold it with a particular kind of  
8 Linemaster foot control and somewhere in the '80s  
9 they changed to another model. And the model that  
10 was involved in the accident is different than what  
11 Heim originally sold this press with, this press  
12 brake with.

13 Q. The drawing you are referring to is what  
14 drawing, sir?

15 A. It is buried in these documents. Let me  
16 see if I can find it.

17 THE VIDEOGRAPHER: Off the record at 9:37 a.m.  
18 (A short break was taken.)

19 THE VIDEOGRAPHER: This is the beginning of  
20 Tape No. 2. Back on the record at 9:42 a.m.

21 THE WITNESS: I think you had asked me what  
22 document was I referring to and I believe this came  
23 out of the discovery. And it is --

24 MR. HARTMAN: Can we mark that, please? I am

1 sorry to interrupt.

2 THE WITNESS: Sure. It seems to have a number  
3 on it, part number at least, A as in apple, 407-D  
4 and it is on Heim, Corp., letterhead.

5 (Whereupon, HUTTER Deposition  
6 Exhibit No. 5 was marked for  
7 identification.)

8 BY MR. HARTMAN:

9 Q. And what does that document tell you, sir?

10 A. This document tells me that there was a  
11 switch from a Linemaster A -- or a 511 switch to a  
12 Linemaster -- it was from a 532 to a 511. So in  
13 the past it had been a 532, and it changed to a  
14 511, again, made by Linemaster.

15 And I believe the 532 had the shields on  
16 the sides and on the top. It didn't have the lip  
17 latch. And I think at that point in time, again in  
18 the '80s, it was changed to a configuration that  
19 had what I referred to as the lip latch or another  
20 mechanism to some way inhibit the movement of the  
21 pedal itself.

22 And it is my understanding at the  
23 time that that would have been a change that Heim  
24 made but at the time of the accident there was a

1 change that wasn't a Heim-supplied foot control  
2 because they weren't supplying it in the year this  
3 was sold --

4 Q. What were they supplying at the time of  
5 this accident, Heim?

6 A. I believe it was a 532.

7 Q. Sir, at the time of the accident, what  
8 foot control were they supplying?

9 A. I don't remember.

10 Q. From looking at that document, based on  
11 that document at the time of the accident, what  
12 kind of foot control would Heim have been  
13 supplying?

14 A. You can't tell that from this document.

15 Q. Well, the document talks about what type  
16 of foot control they are supplying after 1982; does  
17 it not?

18 A. Right, but it could be in '83, '84 and '85  
19 they made other changes. All this tells you is  
20 that in that year and that date there was a change  
21 from this to this. But I don't know that in the  
22 year of the accident that there hadn't been three  
23 or four subsequent changes.

24 Q. Sir, I am going to show you two pages

1 containing four pictures of foot controls.

2 MR. HARTMAN: I would like you to mark those as  
3 -- what would that be, six? Exhibit 6 will contain  
4 both pages.

5 (Whereupon, HUTTER Deposition  
6 Exhibit No. 6 was marked for  
7 identification.)

8 BY MR. HARTMAN:

9 Q. Can you tell me what model -- is that a  
10 Linemaster product?

11 A. This switch actually has the name Hercules  
12 foot switch on it. Hercules is a brand that  
13 Linemaster acquired. So even though it doesn't say  
14 Linemaster at least on the label that I can read  
15 here --

16 Q. I would ask you to look at the bottom of  
17 the label because I believe it does say Linemaster  
18 Switch Corporation.

19 A. I can't tell without a magnifying glass or  
20 the original copy. What I am saying is the  
21 Hercules line of foot controls was, my  
22 understanding was purchased by Linemaster or part  
23 of their product line. I think they also have  
24 switches that don't have the name Hercules on it,

1 that have Linemaster on it.

2 Q. Well, let me give you two additional  
3 pictures and have you look at them. We will call  
4 those photographs Exhibit No. 7.

5 Look at Exhibit No. 7, does that clarify  
6 for you that it was a Linemaster switch?

7 (Whereupon, HUTTER Deposition  
8 Exhibit No. 7 was marked for  
9 identification.)

10 THE WITNESS: This picture 261 clearly shows a  
11 label that says Linemaster switch below Hercules  
12 foot switch.

13 BY MR. HARTMAN:

14 Q. I am going to represent to you, sir, that  
15 those were photographs that were taken in  
16 Mr. Robinson's office of a foot control that was  
17 provided to us as a foot control that Linemaster --  
18 that Heim currently has at its facility for usage.

19 A. Okay.

20 Q. Is that the same type of foot control that  
21 is referenced in the document that you indicate is  
22 authoritative as to the type of foot control placed  
23 on presses after 1982?

24 MR. ROBINSON: Object to the form of the

1 question.

2 THE WITNESS: Yes, I think the document that  
3 I referred to, Exhibit 5, shows that in the early  
4 '80s, '82, there was a change to a 511-B4 and the  
5 photographs, at least this one set of photographs  
6 clearly show the catalog number 511-B4.

7 BY MR. HARTMAN:

8 Q. So if that, if the foot control outlined  
9 in Exhibit 6 and 7 is the foot control that Heim  
10 currently has available for its presses, would you  
11 agree, sir, that the document that you are  
12 referencing speaks to the same type of foot control  
13 that Heim currently has?

14 MR. ROBINSON: Object to the form of the  
15 question.

16 THE WITNESS: Yes, it does refer to that.  
17 I don't know what happened between '82 and the  
18 dates associated with this product. There were  
19 changes in between.

20 And the point I was trying to make was we were  
21 talking about authoritative documents. This is the  
22 only document I have or that's been provided that  
23 I am aware of that shows when this press was sold  
24 it had a different foot control than the foot

1 control at the time of the accident.

2 BY MR. HARTMAN:

3 Q. And that's because there is a change noted  
4 on that document that indicates that it is 1982,  
5 correct?

6 A. That's correct.

7 Q. Would you agree, sir, that that document  
8 that you are referring to as the authoritative  
9 document that we have marked as exhibit,  
10 I believe -- what number exhibit is that, your  
11 drawing?

12 A. It is exhibit, Hutter Exhibit No. 5.

13 Q. Hutter Exhibit No. 5, would you agree,  
14 sir, that if that document is in fact  
15 authoritative, it would note other changes in the  
16 foot control that occurred after 1982?

17 A. No, that's not necessarily true.

18 Q. That's not necessarily true?

19 A. No.

20 Q. Why is that?

21 A. Because -- let's suppose they made a  
22 hundred changes. You wouldn't expect that they  
23 would on one document put those hundred changes on  
24 there. If there is one or two changes, typically

1 you see that trail especially if there is no major  
2 geometry change to the product.

3 But you wouldn't expect to go to Ford  
4 Motor Company and find a drawing of wheels that  
5 dates back to the first car they made and had all  
6 of the wheels that were ever made on a Ford  
7 product.

8 This just happens to document the original  
9 configuration in '74. It doesn't tell you anything  
10 what happened before '74 and that in '82 there was  
11 this design change. But it doesn't tell you what  
12 happened from '82 to current time.

13 Q. What type of document would tell you that?

14 MR. ROBINSON: Object to the form of the  
15 question.

16 THE WITNESS: I don't know that there is any  
17 one type of document. You might have subsequent  
18 pages like this that show different changes,  
19 different options. There may have been different  
20 standards, standard configurations. It depends on  
21 the corporate policy and procedures. I don't think  
22 there is any -- necessary to believe there is any  
23 one other document that would show all the changes  
24 that may have gone on.

1 BY MR. HARTMAN:

2 Q. Do you have any other information that  
3 leads you to believe that the Heim press brake  
4 involved in this accident did not have a Model 511  
5 foot control on it at the time it left Heim?

6 MR. ROBINSON: I will object to the form of the  
7 question.

8 THE WITNESS: That it did not have a 511.

9 This is the only document. This document  
10 I think is the kind of document I would expect to  
11 see showing a change in this time window. But  
12 subsequent changes may not have been -- may never  
13 have occurred or may never have been occurred or  
14 marked on this document and they were marked on  
15 other documents.

16 All this tells me is that in '74 there was this  
17 532 and then in '82 it was changed to a 511.

18 BY MR. HARTMAN:

19 Q. I understand that. I am asking you --

20 A. It is the only document I have in that  
21 regard.

22 Q. Do you have any other information in that  
23 regard in your possession?

24 A. No.

1           Q.    Do you know if any -- do you know of any  
2    other information that exists that would allow you  
3    to identify the type of foot control that was --  
4    accompanied the Heim press brake at the time of the  
5    sale by Heim?

6           A.    You know, I think in some manuals here  
7    they show generally a foot control. So you kind of  
8    see some foot controls but there is not enough  
9    detail. But it shows you, for example, that there  
10   isn't the dual foot control or that it is not a  
11   treadle kind of control. But none of the  
12   photographs that I have seen have enough detail to  
13   distinguish what model of Hercules or what model of  
14   Linemaster switch is there.

15          Q.    So your statement that the Heim press  
16    brake that was involved in this accident did not  
17    have the Model 511 foot control accompanying it at  
18    the time of this sale by Heim is based solely on  
19    the document that you have indicated marked as  
20    Exhibit No. 5?

21          A.    That's correct.

22          Q.    I would like to refer you to your report.

23          A.    Sure.

24            Okay.

1 Q. The third paragraph on the first page.

2 A. Uh-huh.

3 Q. Beginning with its intervening ownership  
4 and application of approximately --

5 A. Okay, yes.

6 Q. Let me read it. It says, its intervening  
7 ownership and application over the approximately  
8 25-year period between initial introduction to the  
9 stream of commerce and the date of the accident is  
10 not completely known.

11 Is that an accurate statement?

12 MR. ROBINSON: Object to the form.

13 THE WITNESS: I don't think the combination of  
14 owner and application is -- I haven't seen anything  
15 that documents it.

16 BY MR. HARTMAN:

17 Q. Is that what you intend to testify to in  
18 this matter?

19 MR. ROBINSON: Objection to the form. We have  
20 gone through this at length. The report itself  
21 speaks to the issues that will be testified to that  
22 is contained within the report. The deposition  
23 gives you the right to ask questions regarding all  
24 of these issues that are within the fair scope of

1 the report. So it is not an appropriate question  
2 to ask the witness what he might be asked to  
3 testify to either by you on cross or by me on  
4 direct examination.

5 BY MR. HARTMAN:

6 Q. Fine. Go ahead. You can answer the  
7 question.

8 A. I don't think I have seen anything that  
9 identifies the combination of ownership and  
10 application and documents it completely over that  
11 25-year time period. In other words, we don't know  
12 what it was used for every day. We don't know how  
13 it was maintained. We don't have -- I haven't seen  
14 a complete file of all of the maintenance records  
15 on it.

16 Q. Sir, I am going to be going through your  
17 report in fairly exhaustive detail. My purpose for  
18 going through the report is two-fold. One is to  
19 find out if what you say in your report you still  
20 hold true today; and two, there will be questions  
21 from me as to the basis for which opinion is  
22 contained in the report.

23 The purpose of this deposition is for me  
24 to find out, because there may be changes in your

1 testimony, there may be new facts gained since the  
2 time of you authoring this report. And that's the  
3 purpose for me asking questions.

4 So, sir, my question is, its intervening  
5 ownership and application over the approximate  
6 25-year period between initial introduction into  
7 the stream of commerce and the date of the accident  
8 is not completely known.

9 A. Yes, I think that's true.

10 Q. Next is you say, Cory Fabricating sold two  
11 hand controls on a movable pedestal after they  
12 purchased the press as used equipment.

13 Is that an accurate statement?

14 A. I believe so.

15 Q. And is that what you intend on saying if  
16 asked during the course -- in the trial of this  
17 matter?

18 MR. ROBINSON: Objection. If I could have a  
19 continuing objection I won't interrupt you on this  
20 issue when you are asking if he is intending to  
21 testify on certain issues. That doesn't bind us in  
22 any way or bind Dr. Hutter from testifying  
23 regardless of what answer he may give to that.

24 MR. HARTMAN: You can have a continuing